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More than three years ago the Supreme Court of Nebraska decided the case of Shellenberger v. Ransom, wherein they held that the murder of an intestate by one to whom ordinarily, as heir, the property would have descended, formed an exception to the statutory rules of inheritance. In that case a father murdered his daughter in order to inherit her property, and shortly thereafter sold the property. The court held that the daughter's property did not descend to the father because of his crime. In so deciding they followed the authority of Riggs v. Palmer wherein the New York Court of Appeals, by a divided bench, had decided that a beneficiary who murders his testator cannot take under the will. (29 Cent. L. J. 470.) At the time of the rendition of the New York decision we took occasion to criticise the conclusion of the court, as being an unwarranted exercise of judicial legislation. (29 Cent. L. J. 461.) And when the Nebraska case made its appearance and it was discovered that that court had read into the Nebraska statute of descent and distribution a disinheriting clause, as the New York court in Riggs v. Palmer had read into the New York statute of wills a revocation clause, we made bold to say that neither decision was the law, though both should be. (32 Cent. L. J. 333.) Shortly thereafter came the decision of an Ohio court in Deem v. Resinger which stated what seemed to be the correct doctrine, viz: that one who commits murder for the purpose of inheriting property is not thereby prevented from inheriting such property, and that the legislature having failed to make any exception in the law as to descents, it is not within the power of a court so to do. (34 Cent. L. J. 247.)

We call attention to these decisions at this time because the Supreme Court of Nebraska has recently, after a rehearing, which has been pending for over three years, reversed its former opinion in the Shellenberger case (59 N. W. Rep. 935). They now hold that statutes should be so construed as to give effect to the intention of the legislature; and if a statute is plain and unambiguous there is no room for construction or interpretation, that the Nebraska statutes of descents is plain and unambiguous and by its own operation vests in the heir such estate as he is thereby entitled to *eo instanti* upon the death of the intestate from whom the inheritance comes; and that the murder of an intestate by the expectant heir formed no exception to the rule. The court points out some of the mistakes and fallacies of the former opinion as well as of the New York court in the decision of Riggs v. Palmer. It seems that the opinion in the case of Insurance Co. v. Armstrong, 117 U. S. 591, upon which great reliance had been placed by both courts was misapprehended and improperly applied. The Nebraska court has at last reached, upon this question, a safe and sound basis. Their former decision as well as that of Riggs v. Palmer is the manifest assertion of a wisdom believed to be superior to that of the legislature upon a question of policy. And we repeat what we have said before in this connection that it is unfortunate that Riggs v. Palmer and the original opinion of the Nebraska court are not the law, a fact doubtless attributable to the infrequency of such unnatural acts as gave rise to the litigation in those cases.

A curious case growing out of the Chilian war has recently been decided in England by the Court of Appeal. The Chilian government sued the London and River Plate Bank for the return of certain bars of silver deposited with it by Balmaceda as security for advances made him by the bank. Some $40,000 was advanced on the bullion in July, 1891, and as to this the Chilian government makes no complaint; but on August 29th, a further sum was advanced and this, the plaintiffs averred, should be set aside, inasmuch as Balmaceda had been defeated on August 28th, and had definitely resigned on August 29th. The point was that his government had ceased to be even *de facto* when the money was advanced, and that the bank should have known that the silver really belonged to the successful revolutionists. But it was rejoined that the bank had no certain or official knowledge of the fall of Balmaceda, and if the rumor of his collapse had proved false, would have been liable in enormous damages for

failing to live up to its contract with him. This view was sustained by the court, and the case was dismissed. The Master of the Rolls laid down the doctrine that you do not need to ascertain the constitutional warrant of a *de facto* government before doing business with it.

NOTES OF RECENT DECISIONS.

DEED—CONSTRUCTION—MARRIED WOMAN—STATUTE OF LIMITATIONS.—In the case of Yore v. Yore, recently decided by the United States Circuit Court at St. Louis, some important points in the law of real property were passed upon. It was held by Judge Thayer that where land is conveyed to a trustee for the sole and separate use of a married woman giving her full power to sell and convey the property, and it is provided that in case she dies without disposing of the property by deed or will, the trust shall cease and determine, and the property shall revert to and vest in her husband; that on the death of the wife, the property being undisposed of, an equitable fee-simple title to the land vested in the husband, and where land is conveyed to a trustee for the sole and separate use of a married woman in trust to pay over to her the rents during her natural life and no longer, with power on her part to dispose of the property, and it is provided therein, that in case of her death without disposing of the property, then that the same shall be held by the trustee for the uses and benefit of her children, that upon her death the title to the property vested in the children; and the husband having entered into possession of the premises, claiming them as his own, and having held them continuously for a period of more than ten years, after the death of the wife, the right of entry of the children as remaindermen was barred.

MUNICIPAL CORPORATION—LIABILITY—DISCHARGE OF FIREWORKS.—The Supreme Court of Arizona hold in Fifield v. Common Council of City of Phoenix, 36 Pac. Rep. 916, that a city is not liable for injuries caused by a discharge of fireworks because the city authorities suspended, for the day of the accident, an ordinance forbidding the discharge of fireworks. Hawkins, J., says:

Section 7 of article 18 of the charter of the city of Phoenix provides, as follows: "Sec. 7. That said corporation shall not be liable to any one, or for any loss or injury to person or property growing out of or caused by the malfeasance, misfeasance, or neglect of duty of any officer or other authorities of said city or for any injury or damages happening to such person or property on account of the condition of any zanja, sewer, cesspool, street, sidewalk or public ground therein, but this does not exonerate any officer of said city or any other person from such liability when such casualty or accident is caused by willful neglect of duty enforced upon such officer or person by law or by the gross negligence or willful misconduct of any such officer or person in any other respect." It seems to us that any fair construction of this section inhibits such form of action against the city. Appellant, in his reply brief, disclaims any negligence on the part of the city marshal in granting the permit, but says it became the negligent act of the city itself, and such city was an agency in the committing of the injury. We are unable to agree to this line of argument. It could not do more than to undertake the evasion of the plain letter of the city charter. Under this charter, if the city officer performs an act which is authorized by an ordinance, it would not, on his part, be negligence. Then, how could it become negligence on the part of the city itself? Plymouth, Ind., had an ordinance prohibiting the firing of gunpowder, or any other substance, except on occasions of public rejoicing, when the mayor granted permission to fire guns, cannons, and other things in which gunpowder was used. On the 4th of July, 1885, the mayor granted permission to fire gunpowder in an anvil on a lot in said city; and when it was fired it blew gravel and stones against one Wheeler's plate-glass windows, and broke them. The Supreme Court of Indiana, in Wheeler v. City of Plymouth, 18 N. E. Rep. 532, in passing upon the question of the liability of the city, says: "A city which has an ordinance prohibiting the firing of gunpowder, but allowing the mayor to license such firing on certain occasions, is not liable for the damage occasioned by the negligence of the licensees, there being nothing to show that the authorized act was necessarily dangerous." It is also decided in the same case that "there is no actionable breach of corporate duty in failing to enact a proper ordinance, or in failing to enforce one that has been enacted; and consequently this action cannot be maintained upon the theory that there was a proper ordinance, nor upon the theory that the ordinance was not enforced." Under this theory, it seems clear that the action at bar could not be maintained if the ordinance was not enforced. Then, upon what system of reasoning could it be maintained because it was suspended for a day? For failing in governmental action, municipal corporations are responsible only to their corporators, or the power creating them. Cooley, Torts, 620. It shows no ground of action when one complains that he has suffered damages because the operation of an ordinance which prevents the explosion of fireworks within the city has been temporarily suspended. *Id.* Lincoln v. City of Boston (Mass.), 20 N. E. Rep. 329, was also a case where the mayor permitted the firing of cannon upon the commons under an ordinance forbidding it unless such permission was given, and the plaintiff's horse took fright and ran away on a neighboring street. This license to fire cannon was held to be an act of municipal government, and the person doing the firing was not the city's agent so as to make the city liable. The firing of the Chinese bombs, in the case at bar, was not the act of the city, nor did the city have any agency in said act. A licensee does not

thereby become the agent of a municipal corporation. *Id.*; Fowle v. Alexandria, 3 Pet. 398. Chief Justice Marshall, in Fowle v. Alexandria, says: "That corporations are bound by their contracts is admitted. That money corporations or those carrying on business for themselves, are liable for torts, is well-settled. But that a legislative corporation, established as a part of the government of the country, is liable for losses sustained by a nonfeasance — by an omission of the corporate body to observe a law of its own, in which no penalty is provided—is a principle for which we can find no precedent." Rivers v. Common Council, 65 Ga. 376, is a well-considered case, and is very similar to the case at bar. The plaintiff, a minor child, while walking upon one of defendant's streets, was seriously gored by a cow which was running at large in the streets of said city. She sued the corporation for damages alleged to be sustained by reason of this misfortune. It will be noticed, by reference to the facts in this case, that the allegations of the declaration are quite similar to the complaint in the case before us. In 1878 the city had an ordinance against cattle running at large. This ordinance was suspended at the time of the injury to the child. Mr. Justice Crawford says: "The adoption of an ordinance in reference to allowing cattle to run at large in the city is one which is wholly legislative, and therefore discretionary. It is not liable in damages for neglecting, omitting, or refusing to notice the subject, or having noticed it, and adopted an ordinance concerning, it then to repeal or suspend it." The same reasoning would undoubtedly apply to an ordinance against the firing of bombs, etc. In the Georgia case, it was argued that, so long as a city fails to legislate, it is not liable, but, when it does, then its liability for damages accrues. The court was unable to appreciate this difference, but cited the case of Hill v. Board, 72 N. C. 55, as a case directly in point. An ordinance prohibiting the use of fireworks was passed, remained in force some years, was then suspended from the 25th day of December to January 1st, inclusive. During this time, by the firing off of squibs, firecrackers, and Roman candles, plaintiff's house was burned, for which he sued the city. Held, that it was within the discretion of the authorities to determine, from time to time, what ordinances were proper, and that the corporation was not liable. Also, see, Tindley v. City of Salem, 50 Am. Rep. 289; Hill v. Board, 21 Am. Rep. 451. If the ordinance in question had been repealed on the day before the accident to appellant, it seems clear that there could be no liability against the city. Then, upon what system of reasoning could he recover simply because the ordinance was suspended on the day of the accident?

Appellant, in his brief, relies upon the cases of Cohen v. Mayor, etc., 113 N. Y. 532, 21 N. E. Rep. 700; Spier v. City of Brooklyn (N. Y. App.) 34 N. E. Rep. 727. In Cohen v. Mayor, etc., the facts were that the city, by a permit, allowed a grocer to keep a wagon in front of his store, when not in use. On a certain morning, Cohen was walking along the street, in front of the grocer's store. At the same time a wagon loaded with ice was passing in one direction, and one loaded with coal was passing in the other. The grocer's wagon, without any horse attached, was standing in front of his store. The thills were tied up in a perpendicular position with a string. The length of the wagon was parallel with the course of the street. The ice wagon, probably in attempting to avoid the coal wagon, caught against the wheel of the grocer's wagon, turned it around, and loosened the thills, so hat they fell, and struck Cohen on the head, injuring him so that he died the next day. The city was held liable. The court held that the permission was not authorized by law, and that the owner of the wagon acquired no right by virtue of the license to store his wagon in the street, and in doing so he was clearly guilty of maintaining a nuisance. The defendant was also guilty because it assumed to authorize the erection and continuance of a nuisance. The legal power to obstruct the street by grant of a license had been withheld by the legislature from the city. Nevertheless, it did grant such a permit, and took a compensation on account of it. In thus doing, the city became a partner in the erection and continuance of such nuisance. Spier v. City of Brooklyn, *supra*, was a case where fireworks were allowed by the mayor, under an ordinance, at the junction of two narrow streets in the city of Brooklyn, and plaintiff's property was destroyed, and the city was held liable; the court having held that the circumstances of that particular case made the same a public nuisance, and the plaintiff recovered under that theory. Such displays, the court seemed to think, should be under the supervision of the municipal authorities, and it was probably entirely proper for the court to rule as it did in this particular case. It was at the junction of two narrow streets of a large city, completely built upon, and where any misadventure in managing the discharge would be likely to result in injuries to persons or property. The action in the case at bar is not upon the theory that the city was guilty of unlawfully erecting and maintaining a nuisance. A city is liable for maintaining a nuisance, unless expressly authorized by law to do so. It was on this theory a recovery was had in the New York cases. It may have been an error of judgment in the officers of the city in granting the permit or suspending the ordinance on the particular street on the day alleged, but cities are not responsible for errors of judgment of their officers in the enforcing of their laws. We must conclude that, both from the reading of the charter of the city and the weight of authority, the chief justice was correct in sustaining the demurrer, and the judgment is affirmed.

INFANTS — CONTRACTS — DISAFFIRMANCE — RETURN OF CONSIDERATION.—Upon the subject of disaffirmance of contract of infant, the Supreme Court of Nebraska in Englebert v. Kroxell, 58 N. W. Rep. 852, decided the following points:

1. All contracts of an infant, except those for necessaries, are voidable by him, at his election, made within a reasonable time after he becomes of age.

2. The validity of a contract made by an infant does not depend upon a ratification thereof by him after his minority ends; but, to invalidate such contract, he must, by some act clear and unmistakable in its character, disaffirm the same.

3. The bringing of a suit in equity by a party to cancel a deed made by him when a minor, and on that ground, is an unequivocal and sufficient disaffirmance of such deed.

4. What is a reasonable time for one after becoming of age, to disaffirm a contract made by him during his minority, is a mixed question of law and fact, to be determined from the circumstances in each particular case.

5. The meaning of the term "necessaries" cannot be defined by a general rule applicable to all cases. The question is a mixed one, of law and fact, to be

determined in each case from the particular facts and circumstances in such case.

6. Under the evidence in this case, held, that services performed by the guardian *ad litem* of an infant in defending a suit brought to foreclose a real-estate mortgage executed by the infant's ancestor were not necessaries.

7. One who seeks to disaffirm a contract on the ground that he was an infant at the time of its execution is required to return so much of the consideration received by him as remains in his possession at the time of such election, but is not required to return an equivalent for such part thereof as may have been disposed of by him during his minority.

8. An infant conveyed his real estate to one P in consideration of $240 in cash paid by P to the infant's father. The father purchased a piano for the infant with the money. The infant, on coming of age, had in his possession the piano, and disaffirmed the deed. Held, that the *quondam* infant, as a condition precedent to his right to disaffirm the deed, was under no legal obligation to tender or surrender the piano to P, nor repay P the money which he had paid the infant's father.

LICENSES AMONG INDIVIDUALS.

A license is an authority given to a person to do some act or a series of acts on the land of another without passing any estate in the land.[1] This definition is not sufficiently broad to cover all cases of license. An authority given to a party to do some act without going on the land of the licensor, which will interfere with the latter's possession, enjoyment or control of such land, is a license.[2] An easement very closely resembles a license, and in some cases it is very difficult to observe any substantial difference between the two. An easement is a right in the owner of one parcel of land by reason of such ownership to use the land of another for a specific purpose, not inconsistent with the general property in the owner.[3] A license may be created by parol, but an easement must be founded on a deed or a writing, or upon prescription, which supposes a deed.[4] When such use of the land of another has been enjoyed for a long time, under circumstances raising an implication of a title thereto, acquired originally by grant, an easement arises by prescription.[5] When in its inception the occupancy of the land was permissive or under a license, such occupancy will not avail to raise any presumption of an easement.[6] In order to have any such effect, the occupancy must be open, continuous and hostile to the owner, and it must be by acquiescence[7] of the owner of the servient estate.[8] An easement can never grow out of a permissive use of land unless the licensee have renounced the authority under which he began such use, and the knowledge of such renunciation and the claim of the licensee has been brought home to the licensor. Under such occupancy of another's land for a period long enough to bar the right of entry, the rebuttable legal presumption of a grant will arise.[9]

Acquiescence Creating a License.—An acquiescence on the part of the owner of the land in the act done on his land will create a license.[10] Where A erected a building on D's land, with the latter's acquiescence, it was adjudged that B licensed the act.[11] A subsequent assent to and ratification of the act is equivalent to an original authority relating back to the time of the act.[12] Even though a license has been revoked by death or change of interest, yet it has been considered to exist or to be created anew by acquiescence in the continued use of the land in the manner authorized by the original license.[13]

Effect of License.—A license is an excuse for acts which would otherwise be trespasses.[14] Such acts done after the revocation of the license are trespasses.[15] Where a license was granted to one to occupy the land of another in making a ditch thereon, it was considered that in the absence of evidence to the contrary such use was intended to be permanent.[16] A license to do an act on another's land does not screen the licensee

[1] Cook v. Stearns, 11 Mass. 533.
[2] Metcalf v. Hart, 3 Wy. 514, 27 Pac. Rep. 907.
[3] Clark v. Glidden, 60 Vt. 702; Hazleton v. Putnam, 3 Chand. (Wis.) 117.
[4] Hazelton v. Putnam, *supra*.
[5] House v. Montgomery, 19 Mo. App. 170.
[6] Curtis v. Le Grande, etc. Co., 20 Oreg. 34.
[7] Curtis v. Le Grande, etc. Co., *supra*.
[8] House v. Montgomery, 19 Mo. App. 170.
[9] Putnam v. Boyce, 111 Mo. 387; Nelson v. Nelson, 41 Mo. App. 130; Cobb v. Smith, 38 Wis. 21.
[10] Pitzman v. Boyce, 111 Mo. 387.
[11] Little v. Willford, 31 Minn. 173.
[12] Fuller v. Tabor, 39 Me. 519; Railroad Co. v. McLanahan, 59 Pa. St. 31; Metcalf v. Hart, 3 Wy. 514, 27 Pac. Rep. 900.
[13] Hodgkins v. Farrington, 150 Mass. 19; Ingalls v. St. Paul, etc. R. R., 39 Minn. 479; Wilson v. St. Paul, etc. R. R., 41 Minn. 56; Prince v. Case, 10 Conn. 375.
[14] Cook v. Stearns, 11 Mass. 533.
[15] Kremer v. Chicago, etc. R. R., 51 Minn. 15, 52 N. W. Rep. 977.
[16] Steinke v. Bentley (Ind. May, 1893), 34 N. W. Rep. 97.

from the effects of his carelessness or unskillfulness in doing such act.[17]

Revocation of License.—Since a license is generally founded in personal confidence, it is considered not to be assignable.[18] It is revoked by a conveyance of the land, by the death of either party, and by the express revocation of the licensor.[19] It is not necessary that the licensor should make an express revocation of the license, but any use by him of the land inconsistent with the continuance of the license will be equivalent to its revocation.[20] The license is revoked by leasing the land to another.[21] A license to take water from a spring is revoked by a sale to another of a right to take such a quantity of water as will exhaust the supply.[22] A license to a partnership is revoked by its dissolution.[23] The license must be used as granted. Where A had a license to use a dam and water pipes on B's land, and afterwards changed the position of the dam and of the pipes, it was held that his license had ceased.[24]

When are Licenses Revocable?—A parol license, before any steps have been taken under it,[25] and such licenses merely to enter upon the lands of another, are always revocable.[26] Whether such licenses are revocable, when, upon the faith thereof, the licensees have expended large sums of money in utilizing them, is a question which has led to great diversity of opinion among the courts. The earlier English decisions held them to be irrevocable (Taylor v. Waters, 7 Taunt. 374; Wood v. Lake, Say.), but these decisions have been overruled, and such licenses are now held to be in all cases revocable.[27] The weight of American authority seems to be that at law such licenses are revocable. It is considered that to hold such licenses to be irrevocable, would be to decide that interests in real estate may be acquired without writing, and to nullify the statute of frauds, that purchasers of real estate would never know what they were buying, and lands would be covered with incumbrances founded upon parol agreements easily misunderstood, and thus all the troubles would be introduced, which were supposed to be removed by the statute of frauds.[28] Other courts, realizing the great frauds which might be perpetrated by allowing the licensor to revoke the license and to appropriate the improvements made by the licensee, have held that the licensor having, by his act, induced the licensee to alter his condition, is estopped to revoke the license.[29] A licensor was not allowed to maintain an action of ejectment.[30] But the natural tendency has been to seek redress in courts of equity, which grant relief frequently when it is denied in courts of law. In most cases courts of equity have been prompt to find some ground of relief, where the revocation of parol license would operate as a fraud on the licensee. In some cases they have enjoined the licensor from interfering in any way with the licensee in the enjoyment of the license.[31] In other cases they construe the license as an agreement to give the right and compel specific performance by deed as of a contract in part executed.[32] Again, courts of

[17] Selden v. Deleware, etc. Co., 29 N. Y. 634.

[18] Prince v. Case, 10 Conn. 375; Snowden v. Wilas, 19 Ind. 13; Fuhr v. Dean, 26 Mo. 16; Metcalf v. Hart, 3 Wy. 514; Carleton v. Redington, 21 N. H. 291; Howe v. Batchelder, 49 N. H. 204. *Contra:* Ficke v. Small, 25 Me. 453; Sawyer v. Wilson, 61 Me. 529.

[19] Metcalf v. Hart, 3 Wy. 514; Foot v. New Haven, etc. Co., 23 Conn. 214; Hazelton v. Putnam, 3 Chand. (Wis.) 117.

[20] School Dist. v. Lindsay, 47 Mo. App. 134; Simpson v. Wright, 21 Ill. App. 67.

[21] Cook v. Stearns, 11 Mass. 533.

[22] Eckerson v. Crippen, 110 N. Y. 585.

[23] Barksdale v. Houston, 81 Va. 764.

[24] Curtis v. Le Grande, etc. Co., 20 Oreg. 34.

[25] Fletcher v. Livingston, 153 Mass. 388; McCrea v. Marsh, 12 Gray, 211; Gibson v. St. Louis, etc. Asso., 33 Mo. App. 165; Lake Erie, etc. R. R. v. Kennedy, 132 Ind. 274.

[26] Fuhr v. Dean, 26 Mo. 116.

[27] Wood v. Leadbitter, 13 Mees. & W. 837.

[28] Cook v. Stearns, 11 Mass. 533; Crosdale v. Lanigan, 129 N. Y. 604; St. Louis N. Stock Yards v. Wiggins F. Co., 112 Ill. 384; Kivett v. McKeithan, 90 N. C. 106; Batchelder v. Hibbard, 58 N. H. 269; Wood v. Michigan Air Line, 90 Mich. 334; Desloge v. Pearce, 38 Mo. 588; Minneapolis M. Co. v. Minneapolis, etc. R. R., 51 Minn. 304; Pitzman v. Boyce, 111 Mo. 387; Houston v. Laffee, 46 N. H. 505; Johnson v. Skillman, 29 Minn. 95; Veghte v. Raritan W. P. Co., 19 N. J. Eq. 142; Bridges v. Purcell, 1 Dev. & Bat. 492.

[29] Messick v. Midland R. R., 128 Ind. 81; Lee v. McLeod, 12 Nev. 280; Lake Erie, etc. R. R. v. Kennedy, 132 Ind. 274; School Dist. v. Lindsay, 47 Mo. App. 134; Gibson v. St. Louis, etc. Assoc., 33 Mo. App. 165; Wilson v. Chalfant, 15 Ohio, 248.

[30] Baker v. Chicago, etc. R. R., 57 Mo. 265. *Contra:* Wood v. Michigan Air Line, 90 Mich. 334. The rule now adopted in Missouri is, that parol licenses are revocable. Pitzman v. Boyce, 111 Mo. 387.

[31] School Dist. v. Lindsay, 47 Mo. App. 134; Williams v. Flood, 63 Mich. 487; Clark v. Glidden, 60 Vt. 702; Little v. Williford, 31 Minn. 173; Flickinger v. Shaw, 87 Cal. 126; Grimshaw v. Belcher, 88 Cal. 217; Saucer v. Keller, 129 Ind. 475; Brauns v. Giesige, 130 Ind. 167; Lake Erie, etc. R. R. v. Michener, 117 Ind. 465.

[32] Veghte v. Raritan W. P. Co., 19 N. J. Eq. 142;

equity have denied the right in such cases to revoke the license till the licensee has been reimbursed for his expenses incurred in carrying out the license.[33] Those courts, which have conceded the right to revoke licenses regardless of the expenses incurred by the licensees, have generally implied in their decisions, that equity could grant relief, though courts of law could not.[34] In fact so general is the idea, that equity and equity alone should grant relief in such cases, that the decisions of the law courts, to hold licenses under such circumstances to be irrevocable, have been considered to be due to the absence of courts with well defined equitable procedure.[35] But however strong may be the opinion, that courts of equity will relieve in such cases, yet all courts do not fully adopt the rule. All courts are not agreed that large expenditures under a parol license justify a decree for specific performance of a contract partially performed. They say they cannot so decree until a contract clear, definite and unequivocal in all its parts is shown.[36] Of course in the case of mere license, the licensee under such rulings would be remediless, unless the court were willing to adopt the principle of an equitable estoppel, which a perusal of the decisions does not induce the writer to believe to be probable.

Licenses with Grants Irrevocable.—A license by parol, coupled with a grant, is as irrevocable as a license by deed, provided the grant be of a nature to be made by parol.[37] When a person sells personal chattels on his own land, he grants a license to enter upon his land to remove such chattels, which license is irrevocable till a reasonable time to effect such removal has elapsed.[38] So if a license is granted to enter on A's land and to cut and remove therefrom any of the products of the earth, such license can be revoked as to any products which have not been severed from the earth, but the licensee has become the owner of those which have been severed, and his right to enter and remove the same is irrevocable till a sufficient time for such removal has elapsed.[39]

Licenses Relative to Easements.—When a person with a right of easement on another's land licenses such party to act in contravention of such easement, such license, if action has been taken thereunder, is irrevocable, and the easement is extinguished.[40]

Effects of Revocation of License. — The revocation of a license cannot effect acts already done under the license, which were thereby authorized, but makes subsequent similar acts trespasses.[41] Nor upon revocation of a license is the licensee bound to restore the premises to the condition in which he found them.[42]

Removal of Structures.—The revocation of a license does not affect the title to property which the licensee has placed on the licensor's land.[43] If the licensee sells the property on the licensor's land, the purchaser has no right to occupy or use it on the licensor's land, but only the right to remove it.[44] So if the structure is sold on execution against the licensee, the purchaser may remove it.[45] In all cases a reasonable time is allowed in which to make the removal.[46] In

Pope v. Henry, 24 Vt. 560; Metcalf v. Hart, 3 Wy. 514; Williams v. Flood, 63 Mich. 487; Clark v. Glidden, 60 Vt. 702; Olmstead v. Abbott, 61 Vt. 281; Flickinger v. Shaw, 87 Cal. 126; Cook v. Pridgen, 45 Ga. 331.

[33] Clement v. Durgin, 5 Me. 9; Pope v. Henry, 24 Vt. 560; Southwestern R. R. v. Mitchell, 69 Ga. 114; Nowlin v. Whipple, 120 Ind. 596; Saucer v. Keller, 129 Ind. 475; Bush v. Sullivan, 3 G. Greene, 344; Harkness v. Burton, 39 Iowa, 101; Bridges v. Purcell, 1 Dev. & Bat. 492; Hazleton v. Putnam, 3 Chand. 117.

[34] Houston v. Laffee, 46 N. H. 505; Metcalf v. Hart, 3 Wy. 514; Fuhr v. Dean, 26 Mo. 116; Little v. Willford, 31 Minn. 173; Foot v. New Haven & Co., 23 Conn. 214.

[35] Foot v. New Haven & Co., 23 Conn. 214; Hazleton v. Putnam, 3 Chandler, 117.

[36] Hazelton v. Putnam, 3 Chand. (Wis.) 117; Crosdale v. Lanigan, 129 N. Y. 604; Minneapolis M. Co. v. Minneapolis, etc. R. R., 51 Minn. 304; Pitzman v. Boyce, 111 Mo. 387; Johnson v. Skillman, 29 Minn. 95; St. Louis N. Stock Yards v. Wiggins F. Co., 112 Ill. 384.

[37] Wood v. Leadbitter, 13 M. & W. 838.

[38] Sterling v. Warden, 51 N. H. 217; Wood v. Manley, 11 A. & E. 34.

[39] Nettleton v. Sikes, 8 Metc. (Mass.) 34; Metcalf v. Hart, 3 Wy. 514, 27 Pac. Rep. 900; Drake v. Wells, 11 Allen, 141; Johnson v. Skillman, 29 Minn. 95.

[40] Johnson v. Skillman, 29 Minn. 95; Pitzman v. Boyce, 111 Mo. 387; Veghte v. Raritan W. P. Co., 19 N. J. Eq. 142.

[41] Kremer v. Chicago, etc. R. R., 51 Minn. 15; Desloge v. Pearce, 38 Mo. 588; Marstow v. Gale, 24 N. H. 176; Pitzman v. Boyce, 111 Mo. 387.

[42] Carter v. Page, 4 Ired. 424; Desloge v. Pearce, 38 Mo. 588.

[43] Houston v. Laffee, 46 N. H. 505; Hilborne v. Brown, 12 Me. 162; Price v. Case, 10 Conn. 375; Russell v. Richards, 11 Me. 371; Ingalls v. St. Paul, etc. R. R., 39 Minn. 479.

[44] Carleton v. Redington, 21 N. H. 291.

[45] Osgood v. Howard, 6 Greenl. (Me.) 452.

[46] Pitzman v. Boyce, 111 Mo. 387; Wilson v. St. Paul, etc. R. R., 41 Minn. 56; Carelton v. Redington, 21 N. H. 291; Hodgkins v. Farrington, 150 Mass. 19.

case such structure is not removed the licensor may remote it, but cannot wantonly injure it.[47] If the licensee himself refuses to leave upon request after the termination of the license, the licensor may enter and put him out, probably not by a breach of the peace.[48]

Are any Structures Irremovable? — The rules of law as to when personal property, which is attached to the realty, becomes a part thereof and irremovable, vary according to the interests of the parties. As between the heir and the executor the law favors the heir, the vendee is favored as against the vendor, and the mortgagee as against the mortgagor. As between the landlord and tenant the law favors the tenant. Any erection which the tenant puts on the land which can be regarded as a trade fixture, is removable by him. In practice everything is removable in such cases. The Supreme Court of the United States says the sole question on the right of removal is, whether the structure was designed for trade, and it is immaterial what is the form or size of the building, whether it has a brick foundation or not, or has a brick or other chimney or not. Such was the nature of the house in question, and the tenant was justified in removing all the materials from the ground.[49] In such cases the fact that the buildings are attached to the freehold makes no difference.[50] Certainly the law of license must be equally favorable to the licensee. In fact it is asserted that in the case of a license the rules between a lessor and lessee, or landlord and tenant, are not of much use.[51] "It has been repeatedly held that a building or other fixture which is ordinarily a part of the realty, is personal property when placed on the land of another by contract or consent of the owner. And it need not be a trade fixture."[52] Other decisions state the general principle, making no exception, and allow the removal of houses, the facts in the cases leaving the nature of their connection with the soil uncertain.[53] In Minnesota, in two cases, where the licensees were allowed to remove their buildings, the court says the buildings erected by a licensee may be removed if such removal works no serious injury to the land or premises of the licensor. These statements were in those cases merely *obiter dicta*, and do not seem to be supported by the authorities cited by the court.[54] It has been held that the denial of a right on the part of the licensee to remove his structures upon the revocation of his license, would enable a licensee to transfer his property by means of expensive structures to a licensor, in whom he had confidence, and thus to defraud his creditors. In this case the dwelling erected was adjudged to belong to the licensee.[55] Where the iron rails of a railroad were solidly spiked to the sleepers, which were securely fastened to the land, the licensee was allowed to remove the rails.[56] Pipes drawing water under the licensor's ground from a well 12 feet deep, which was deepened to 17 feet because it was too shallow, continued to be the property of the licensee after the withdrawal of the license.[57]

Time Allowed for Removal.—A licensee is allowed a reasonable time after the termination of his license, within which to remove his structures.[58] What is a reasonable time depends upon circumstances.[59] When the license is revoked it would seem but justice, that the licensee should know that the licensor or his successor had so willed before the time of his right of removal should begin to run against him. Where he receives notice by acts of the licensor, visible to him, it would be unreasonable to ask for further notice, but it would be unjust to deprive him of his rights without knowledge of the intention of others to end them. Accordingly it has been held that notice of revocation must be given to the licensee.[60] The statement that a change of ownership, or the death of either party, revokes the license, should be modified by the addition of these words: at

[47] Prince v. Case, 10 Conn. 375.
[48] Harris v. Gillingham, 6 N. H. 9.
[49] Van Ness v. Pacard, 27 U. S. 137.
[50] White's Appeal, 10 Barr, 252.
[51] Osgood v. Howard, 6 Greenl. 452.
[52] Weathersby v. Sleeper, 42 Miss. 732; Hines v. Ament, 43 Mo. 298; Witherspoon v. Nickels, 27 Ark. 332; Fuller v. Tabor, 39 Me. 519.
[53] Wells v. Banister, 4 Mass. 514; Osgood v. Howard, 6 Greenl. 452.
[54] Little v. Williford, 31 Minn. 173; Ingalls v. St. Paul, etc. R. R., 39 Minn. 479.
[55] Osgood v. Howard, 6 Greenl. (Me.) 452.
[56] Dietrich v. Murdock, 42 Mo. 279.
[57] Houston v. Laffee, 46 N. H. 505.
[58] Pitzman v. Boyce, 111 Mo. 387; Ingalls v. St. Paul, R. R., 39 Minn. 479.
[59] Russell v. Richards, 11 Me. 371.
[60] Kivett v. McKeithan, 90 N. C. 106; Beck v. Louisville, etc. R. R., 65 Miss. 172.

the option of either party in interest. Of course the licensor or his representatives in interest are the only persons who will claim a revocation. The licensor or his representatives can waive a revocation, or, as said before, can create a new license by assenting to, or acquiescing in, the continued enjoyment of the license by those interested therein. Where the ownership of a house erected by license on another person's land had changed ownership several times, and the land had also changed ownership, the owner of the land was debarred from taking possession of the house till after notice of the revocation of the lease and due opportunity to remove the building.[61] A erected a building on B's landby his consent. Subsequently a creditor of A by judicial proceedings sold this building to C. B then sold the land to D, the building remained unoccupied for three years thereafter. It was held, that inasmuch as D had made no objection to the building remaining there, and gave no notice to C to remove it, that it remained C's building, and that he could maintain trover against D for appropriating it.[62] A erected a house by consent of B on the latter's land. B died subsequently in 1824. A conveyed the house to C in 1826. A died in 1828. The house, though still on the land, was admitted to be in 1832 the property of C.[63] A raised a garden wall standing on B's land by his consent four stories high, and inserted the timbers of his own house therein. A's land and B's land changed ownership subsequently several times. Held, that the successors of A could not be treated as trespassers till they were notified that B's license was withdrawn, and that they were then entitled to a reasonable time in which to remove their wall.[64] Where A, by structures on his own land, affects the land of another by overflow or otherwise with his consent, and such license is terminated by death or grant of property, the licensee or his successor in interest cannot be sued for maintaining a nuisance for continuing to avail himself of the license, till he has been notified to remove his structure.[65] It would follow that in such cases, when the representatives of the licensor give no notice of the revocation of the license, that the rights of the parties remained unaltered relative thereto.

Remedy for Appropriation of Structures.—Should the licensor revoke the lease, and deny the right of the licensee to remove his structures, and appropriate the same, the remedy of the licensee is to sue for their value in trover.[66]

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[61] Ingalls v. St. Paul, etc. R. R., 39 Minn. 479.
[62] Russell v. Richards, 11 Me. 371.
[63] Prince v. Case, 10 Conn. 375.
[64] Hodgkins v. Farrington, 150 Mass 19.
[65] Carleton v. Redington, 21 N. H. 291; Carter v. Page, 4 Ired. 424.
[66] Hilborne v. Brown, 12 Me. 162; Russell v. Richards, 11 Me. 371; Metcalf v. Hart, 3 Wy. 514; Williams v. Flood, 63 Mich. 487.

COMMON-LAW MARRIAGE—EVIDENCE.

TERRY V. WHITE.

Supreme Court of Minnesota, July 19, 1894.

1. The evidence in this case considered, and held not sufficient to prove a common-law marriage.

2. Where it appears that the intercourse between the parties was originally illicit, there being no impediment to marriage, it will be presumed that the intercourse continued to be illicit; and where their subsequent relations appear to be somewhat clandestine, and are kept concealed from relations and all except servants, physicians, and others so employed, who will necessarily discover that the relation is illicit, unless made to believe that the parties are married, the evidence is insufficient to prove marriage. But it is not held that the evidence may not be sufficient where such subsequent relations have all the appearance of the marriage relation, and there is nothing apparently clandestine, and no divided reputation, and the parties acknowledge each other on all occasions and under all circumstances as man and wife to the extent that married persons ordinarily do.

CANTY, J.: Frederick Terry resided in St. Paul many years and until the time of his death, in 1892. He died intestate. Letters of administration were taken out on his estate, and matters proceeded until the time for hearing on the final account and ordering the distribution of the estate, when the respondent appeared, and claimed to be the widow of the deceased, which was denied by the next of kin, and found against her by the Probate Court. Thereupon she appealed to the District Court, and on a trial there before a jury, the jury found that at the time of his death she was the wife of said deceased, and this is an appeal from an order denying a motion for a new trial.

The principal point urged by appellant is that there is not sufficient evidence to sustain the verdict. It appears by the evidence that the deceased never was married, unless it was to respondent. In May, 1885, the respondent, then known as Ellen Balderson, lived in some rooms in St. Paul,

and worked in a shirt factory. She seems to have been acquainted with the keeper of a restaurant, who sent her word one evening to call at the restaurant, which she did about 7 o'clock in the evening, and was shown up into a private dining room, where she met and was introduced to the deceased, drank wine, and had supper with him there, and went home late to her rooms. Shortly after, illicit intercourse commenced between them, and for six months she continued her work at the shirt factory, and he visited her at her rooms, and contributed somewhat to her support. The deceased owned a house, which was for rent, and one White was his agent to rent it and collect the rents. Terry sent her to White to rent this house of him, and gave her the money to pay the rent. She rented it, ceased to work in the shirt factory, and went there to live. Terry gave her the money to pay the rent. She paid it to White, and he paid it back again to Terry, never knowing that Terry was in this way paying and receiving rent for his own house, or that he was living there himself. White always knew respondent as Ella Balderson, and gave her receipts for the rent every month in that name. Matters ran along this way for two or three years, when White's clerk had an altercation with Miss Balderson on account of her failure to pay the rent promptly, and Terry then informed White that he would collect the rent himself. Respondent lived in this house about five years, when Terry sold the house, and she moved to another house, which he rented for her, and she lived there until the time of his death. Respondent testifies that during all of this time since she first moved into Terry's house he lived there with her, and there is no evidence in the case showing that during this time he lived anywhere else. She admits that he went on a visit occasionally to see his relatives; that he never brought any of his friends or acquaintances to the house; that some of his brothers and sisters were frequently in St. Paul and at Ft. Snelling, but that she never saw any of them, and, except as hereinafter stated, he or she never had any callers or visitors at the house, and he never took her out in public. He broke his leg about four years before his death, and she nursed him, and she also nursed him during his last sickness, and he died in the house where she lived. This is proved by the testimony of several witnesses. One witness—a physician who attended both of them at such residence—testified that he did not know her as Mrs. Terry until 1885. Another witness—a dentist—testified that in the fall of 1885 Terry requested him to do some work on his wife's teeth, and the woman who came was respondent. Another witness testified that she lived in the same block, and used to wash and do other work for Terry and respondent at their house, and often heard him refer to her as his wife. Another witness testified that he worked in a saloon where Terry used to resort, and once, three years before Terry died, he gave the witness money to get a ton of coal for his wife, and to have it delivered at the house. That witness nursed Terry at their residence for two weeks before he died, and often heard him refer to respondent as his wife. Another witness testified that Terry came to the back yard, and asked her to come in and see his wife, who was sick, and the witness did accordingly. All of this evidence is uncontroverted. Terry had no business, and lived on a small income. He was about 47 or 48 years old at the time of his death, and respondent about 38. After the death of Terry, White took charge of the body, made arrangements for the funeral, and sent the body to the relatives of Terry in the east. He also, with the assistance of respondent, took charge of clothes, articles of jewelry, books, and other personal effects of deceased, and sent them to such relatives, and she consented to these acts. She told White that she had been living with Terry ever since she rented his house of White. Respondent testified that after Terry's death she told White that she and Terry were married, but afterwards she admitted that she told him that Terry had promised to marry her, and that he also promised to remember her in his will, and that she was much disappointed because he had not; that she knew that White was appointed administrator at the request of said eastern relatives. She informed White that she nursed deceased in his last sickness, and he as administrator, paid her $20 therefor, and without any suggestion as to how she should sign the receipt for it she signed it "Ella Balderson." A short time before this she wrote a postal card to White, which she signed with the initials "E. B.," and she admits that she had several talks with White in which he talked about her being paid for having been Terry's housekeeper, and that she never at such conversations told him that she was Terry's wife. She also admits that she first learned that she had a claim to be Terry's wife when, some time afterwards, she went to consult her present lawyers. She had no relatives in the city. These are substantially the facts of the case.

We are of the opinion that there is not sufficient evidence to prove a common-law marriage. It is conceded that the connection was at first illicit, and that there never was any marriage ceremony. "If parties come together intending and choosing illicit commerce, there being no impediment to marriage, it cannot be presumed without reasons, whatever the law under which they live, that they have altered their choice. A condition of things once shown to exist is presumed to continue." 1 Bish. Mar. & Div. § 506. See, also, Williams v. Williams, 46 Wis. 464, 1 N. W. Rep. 98; Harbeck v. Harbeck, 102 N. Y. 714, 7 N. E. Rep. 408; Cartwright v. McGown, 121 Ill. 388, 12 N. E. Rep. 737. "The intercourse was originally meretricious, and there was no reason why Blasius should change it. Marriage was not needed as the price to be paid for the gratification of some passion. The girl had already yielded, apparently without much objection, to his solicitation, and was living

with him as his mistress. · · · Until the time when they separated, in 1858, they lived together as husband and wife, to the extent at least of sharing the same rooms, and indicating to hotel keepers, dressmakers, servants, and others, with whom they necessarily had occasion to come in contact, that their relationship was a proper one. Standing alone, such testimony would be very strong evidence in support of an asserted marriage, but it is also the way a man and mistress frequently live, in which it may be said they must live if they frequent respectable hotels; and when it appears that their living together began illicitly, something more than mere continuance, coupled with such declarations as would make that continuance pleasant for them, is needed to support an inference that they were married." Arnold v. Chesebrough, 46 Fed. Rep. 700, affirmed 58 Fed. Rep. 833, 7 C. C. A. 508. We do not wish to be understood as holding that, even where it appears that at the commencement the intercourse is illicit, subsequently continuing to live together as man and wife may not be sufficient evidence of marriage, when their subsequent relations have all the appearances of the marriage relation, and not merely a part of those appearances; where there is no divided reputation, no secrecy, nothing apparently clandestine, but they acknowledge each other on all occasions and under all circumstances as man and wife, to the extent that persons occupying that relation ordinarily would. But it sufficiently appears that respondent did not herself regard the relation between her and Terry as that of marriage. After his death she signed the receipt and postal card by her maiden name, and did not consider herself the widow of Terry until she was informed by her lawyer that she could make that claim. This is not consistent with an agreement or understanding that they were married. "We cannot avoid the conclusion that whatever these parties may have done to keep up appearances, neither of them ever supposed they were married. · · · The real question is how they themselves regarded their relation, and reputation is only important as circumstantial evidence of this." Cross v. Cross, 55 Mich. 287, 21 N. W. Rep. 309. See, also, Port v. Port, 70 Ill. 484. "Habit and repute do not create the marriage relation. But it exists where, on the parties cohabiting as husband and wife, and being accepted in society and reputed as such, they are presumed *prima facie* to be such." 1 Bish. Mar. & Div. § 266. It seems to us that respondent has herself rebutted this presumption. It is given as a reason for the secret and clandestine manner in which apparently they lived together that such a marriage might be very distasteful to his relatives if known to them, but the acts and admissions of the respondent after his death were sufficient to show that it was not a secret marriage relation, but an illicit relation, that they were attempting to conceal. Section 99, ch. 73, Gen. St. 1878, does not change this rule, but is simply declaratory of the rule of evidence at common law. This rule may seem harsh in this case. The question usually has arisen where, after the parties had done as these parties did, they separated, and one or both married some one else. Years afterwards, when one of them died, the other appeared with this kind of proof of a common-law marriage to make bastards of the children, and take the property of the dead one. The marriage relation is too important a matter, and of too much consequence to others besides the immediate contracting parties, to permit it to be established by vague or shadowy proof. The order appealed from should be reversed. So ordered.

NOTE.—At common law to constitute marriage no particular solemnities or forms were necessary. Merely consent to enter into the relation of husband and wife was all that was essential. 2 Lawson's Rights, Remedies and Practice, p. 1304. Such informal marriages have been recognized in the United States. Meister v. Moore, 96 U. S. 76; Cartwright v. McGown, 121 Ill. 388; Hutchins v. Kimmell, 31 Mich. 126; Dyer v. Brannock, 66 Mo. 391; Dickerson v. Brown, 49 Miss. 357; Campbell v. Gullett, 43 Ala. 57. Thus it has been held in a number of cases in this country that a contract to marry *per verba de futuro*, followed by cohabitation, is a valid marriage at common law. Port v. Port, 70 Ill. 486; Askew v. Dupree, 30 Ga. 173; Chamberlain v. Chamberlain, 71 N. Y. 423; Duncan v. Duncan, 10 Ohio St. 181. The mutual present assent to immediate marriage by persons capable of assuming that relation is sufficient to constitute marriage at common law, but generally the legislature has full power not to prohibit but to prescribe reasonable regulations relating to marriage. State v. Walker, 36 Kan. 297. Evidence of consent and agreement to become man and wife and of their cohabiting together, is sufficient proof of marriage. Boone v. Purnell, 28 Md. 607; Ferre v. Public Administrator, 4 Bradf. 28. Circumstances of cohabitation and acknowledgment, reputation and recognition by the family form a presumption that a connection was matrimonial not meretricious. *In re* Christie, 1 Tuck. 81. But marriage will not be presumed ever where for convenience the parties hold themselves out as man and wife, provided their cohabitation has the elements of a purely meretricious relation. Betrothal only followed by cohabitation but without a present agreement to become husband and wife does not constitute a valid marriage. Peck v. Peck, 12 R. I. 485. Where the beginning of a cohabitation is illicit there can be no presumption of marriage from the cohabitation and reputation. Reading Insurance Co.'s Appeal, 113 Pa. St. 204. It has been held that a marriage may be proved by presumption from evidence of repute and cohabitation even against a subsequent ceremonial marriage. Brower v. Brower, 1 Abb. App. 214: Camden v. Belgrade, 75 Me. 126.

Illustrations.—A man and woman claim to have been married at a particular time and place; they cohabited and kept house together as man and wife for ten years; two children were born of their connection. Held, that a marriage in fact existed, even though the ceremonial marriage as claimed might have been disproved. Tummalty v. Tummalty, 3 Bradf. 369; Grotgen v. Grotgen, 3 Bradf. 373. A man and woman being engaged to be married, the former stated to the latter that he did not believe in marriage ceremonies, and wished her to waive the ceremony,

saying that a marriage without it would be perfectly valid. She finally consented to waive the ceremony, and fixed a day for the marriage. On that day, while they were riding together in a carriage, he placed a ring upon her finger, saying, "This is your wedding ring; we are married." She received the ring as a wedding ring. He then said: "We are married. I will live with you and take care of you all the days of my life, as my wife." She assented to this, and they went to a house where he had previously engaged board for himself and wife, where they lived together as man and wife for about five weeks, he treating her as his wife, and addressing and speaking of her as such. Held, in her action for a divorce, that this was a valid marriage. Bissell v. Bissell, 55 Barb. 325; 7 Abb. Pr. (N. S.), 16. Defendant and M lived together as husband and wife for nearly forty years. They addressed each other as husband and wife; she bore his name; land was conveyed to her as his wife, and she made a will describing herself as his wife. In an action by a devisee of M to recover possession of premises claimed by defendant as tenant by courtesy, defendant testified: "By mutual consent we lived as man and wife;" and again: "The marriage ceremony was never performed only by mutual consent;" "I promised to marry her." Held, that these facts were evidence of a valid marriage, not only as to third persons, but as between M and defendant. Richard v. Brehm, 73 Pa. St. 140, 13 Am. Rep. 733. Continuous matrimonial intercourse for thirty-four years was shown between a man and woman, under an assumed name. The man also lived as a bachelor in another locality, among his relatives and friends, who did not know of the cohabitation. Held, 1. That evidence that he was reputed to be a bachelor was incompetent; 2. That a letter written by a man, and signed by the woman, in the assumed matrimonial name, expressed in the plural sense, and congratulating her nephew on his marriage, was competent to prove the marriage. Badger v. Badger, 88 N. Y. 546, 42 Am. Rep. 263. Decedent, whose family relationship was in issue, had just before his death been found traveling in company with a woman and certain young children, toward whom these adults were observed to perform the office of parents; the baggage inferentially shown to belong to deceased containing wearing apparel apparently suitable to all the party in common. Held, that these circumstances afforded an inference that the relation of husband and wife existed. Kansas Pac. R. R. Co. v. Miller, 2 Col. T. 442. Defendant being on trial for murder, a woman was offered as a witness for the State, who on her *voir dire* stated that she and the defendant agreed to marry; that defendant told her that he could not get a license for them to marry at that time, because "all the old licenses had run out," but that "as soon as the new licenses came in" he would get a license, and upon this they cohabited. Held, no marriage. Robertson v. State, 42 Ala. 509. Parties went before a justice, and taking each other by the right hand, in the presence of witnesses, voluntarily declared, with the usual mutual covenants, that they took each other for husband and wife, and then called on a justice to make a record of the proceedings, which he did. Held, that there was no legal marriage. Mangue v. Mangue, 1 Mass. 240. A woman, claiming to be the widow of one deceased, admitted that no actual marriage ever took place, but rested her claim upon a declaration of the deceased, made to her in the absence of witnesses, that he would claim her as his wife, and would take care of her and the children. Held, that her testimony established the fact that there had been no marriage, and that, therefore, evidence of reputation and cohabitation were inadmissible for the purpose of proving a marriage. *In re* Tholey, 93 Pa. St. 36.

JETSAM AND FLOTSAM.

HOW FAR CORPORATIONS MAY LIMIT ITS LIABILITY.

The question as to how far a corporation may limit its liability and the manner in which it may do so has been recently discussed and decided in the case of Richardson, Spence & Company *et al.* v. Rowntree, in a decision handed down by the House of Lords. The respondent became a passenger by steamship, owned by the appellants, and received a ticket, upon which it was printed, in small type, certain conditions limiting the liability of the ship owners for loss or injury to the passengers or their luggage. This ticket was handed to the respondent folded up so that the conditions were not visible, and her attention was not called to them. The question involved was whether the respondent was bound by certain conditions limiting the liability of the appellants who had engaged to carry her on their steamer from Philadelphia to Liverpool, and by whose servants' negligence she was injured. Following the leading case in England of Parker v. Southeastern Railway Company, 26 L. T. Rep. (N. S.) 540; 2 C. P. Div. 416, these questions were left to the jury: First. Did the plaintiff know that there was writing or printing on the ticket? Second. Did she know that such writing or printing on the ticket contained conditions relating to the terms of contract of carriage? And third. Did the appellants do whatwas reasonably sufficient to give the plaintiff notice of the conditions? The case on the appeal depended on the determination of the third question. In the case of Parker v. Southeastern Railway Company, the Court of Appeal held that they could not say, as a matter of law, that by reason of taking a ticket in exchange for goods, the plaintiff was bound by the conditions, that these questions should be determined by the jury, and on their finding would depend the liability of the defendants.

In the case under discussion the question as to whether the appellants did what was reasonably sufficient to give the respondent notice of the conditions was discussed, and the fact that the respondent received the ticket, handed to her folded up by the ticket clerk, and that no writing was visible unless she opened and read it, were held sufficient to uphold a judgment for the respondent. Lord Ashbourne concurring in the opinion of the lord chancellor gives additional reasons why such contract made by the company should not be binding in certain cases like the one under discussion. He says that the smallness of the type in which the alleged conditions were printed, and the failure of the company to call attention to them, to a steerage passenger who belongs to a class of people of the humblest description, many of whom have little education, and some of them none, are sufficient facts to uphold any determination that the company had not performed its full duty, and had not sufficiently and reasonably called the attention of the holder of the ticket to a condition of which he should have had full knowledge in order to consent to the conditions contained in it.—*Albany Law Journal.*

BOOKS RECEIVED.

Hand-Book of Common Law Pleading. By Benjamin J. Shipman, St. Paul, Minn.: West Publishing Co. 1894.

Problems and Quiz on Common Law Pleading. By Earl P. Hopkins, LL. B., A. B , Author of "Problems and Quiz on Criminal Law," etc. St. Paul, Minn.: West Publishing Co. 1894.

The American and English Encyclopædia of Law. Compiled under the editorial supervision of Charles F. Williams, assisted by Thomas J. Michie. Volume XXV. Northport, Long Island, N. Y.: Edward Thompson Company, Law Publishers. 1894.

Commentaries on American Law, By James Kent, LL. D., Chancellor of the State of New York. In one Volume, edited by Wm. Hardcastle Browne, A. M. of the Philadelphia Bar. Author of an edition of Blackstone's Commentaries; also of a Commentary on the Law of Divorce, and Alimony, etc. St. Paul, Minn.: West Publishing Co. 1894.

HUMORS OF THE LAW.

Client to Chicago Lawyer: "I tried to collect the money myself, but was put off from time to time until I was worn out. Finally he became insulting, and abusive, and told me to go to the devil, and I then made up my mind to come to you."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ADMINISTRATION—Jurisdiction to Issue Letters.—Where a person dies intestate, who was not a resident or inhabitant of the State at the time of his death, and who left no estate within the estate to be administered, a Probate Court of the State has no jurisdiction to issue letters of administration on the estate of such intestate; and, where letters are issued, the acts of the court, in doing so, are utterly null and void.—MALLORY v. BURLINGTON & M. R. R. CO. IN NEBRASKA, Kan., 36 Pac. Rep. 1059.

2. ADMINISTRATION DE BONIS NON — Limitations.—Rev. St. art. 1827, which prescribes the time within which administration shall be granted on the estate of a decedent, has no application to the granting of an administration *de bonis non*.—ADAMS v. RICHARDSON'S ESTATE, Tex., 27 S. W. Rep. 29.

3. AMENDMENT OF VERDICT. — After a verdict for plaintiff in ejectment for all the land claimed by him, the entry of an order thereon, and the discharge of the jury, the court cannot, in effect, alter the verdict by making an order declaring that it will grant a new trial, unless plaintiff abate said verdict, and take judgment for a certain part of the land sued for.—SHIFLET v. DOWELL, Va., 19 S. E. Rep. 848.

4. APPEAL—Bond—Construction.—In an action on an undertaking given on appeal to this court, held, under circumstances set forth in the opinion, that the word "judgment" could not be expunged from the undertaking, and the word "order" inserted in its place, as a clerical error. There was no attempt to reform the undertaking on the ground of mistake.—TRAVELERS' INS. CO. v. WEBER, N. Dak., 59 N. W. Rep. 529.

5. APPLICATION OF PAYMENTS.—If one indebted to another on several accounts fails to direct the application of a partial payment, at the time of the payment, the creditor may apply it on either account.—PEARCE v. WALKER, Ala., 15 South. Rep. 568.

6. ASSIGNMENT FOR CREDITORS — Possession.—The mere appointment of an assignee for benefit of creditors does not give him right to possession of chattels which the assignor has mortgaged, and which the sheriff, at the direction of the mortgagee, has taken possession of, for condition broken, for purpose of foreclosure sale; but it must first be shown, by legal proceedings, that the assignee has a superior right to the property.—SANDERS v. MAIN, Wash., 36 Pac. Rep. 1050.

7. ATTACHMENT—Dissolution — Insolvency.— An attachment is not dissolved by the subsequent joinder of plaintiff in a proceeding to have the debtor declared an insolvent.—BERTZ v. TURNER, Cal., 36 Pac. Rep. 1014.

8. ATTACHMENT AGAINST NON-RESIDENT—Affidavit.—The fact that the affidavit for an attachment against a non resident fails to state, as required by the statute, that the attachment was "not sued out for the purpose of injuring the defendant," does not render void the subsequent judgment and sale thereunder of the land attached.—BARLELLI v. WAGNER, Tex., 27 S. W. Rep. 17.

9. BANKS—Insolvency — Receiver.—Under the bank commissioners' act (St. 1877, p. 744), as amended by St. 1-86-87, p. 90, authorizing the attorney general, upon receiving a report from the bank commissioners that it is unsafe for a certain bank to continue business, to bring an action to enjoin it from doing any further business, and authorizing the court, if, after a hearing, it deems it necessary, to issue the injunction, and to direct the commissioners to take such proceedings against it as may be decided upon by its creditors, the court has no power, on an *ex parte* hearing, to enjoin the bank from doing business, and appoint a receiver therefor.—PEOPLE'S HOME SAV. BANK v. SUPERIOR COURT OF CITY AND COUNTY OF SAN FRANCISCO, Cal., 36 Pac. Rep. 1015.

10. BANKS — Presentment of Check.—The payee of a check, who fails to make presentment within a reasonable time, assumes the risk of loss occasioned by

the insolvency of the drawee occurring in the meantime.—ANDERSON V. RODGERS, Kan., 36 Pac. Rep. 1067.

11. BENEVOLENT SOCIETIES — Release of Claim by Beneficiary.—Where the laws of a beneficial order require the financier of each subordinate council or lodge to keep an account, in which shall be stated any payments of assessments made to him by members, with the dates of payments, the report of the presiding officer, recorder, and treasurer of such lodge, made up from *data* furnished by such financier to the proper officer by the supreme body, is not evidence against the beneficiary of a deceased member, to show that such member was suspended for the non-payment of a certain assessment, especially when such report is dated one day before the time for paying such assessment expired, and contains numerous alterations and errors, and is contradictory of receipts issued by such financier.—HENRY V. IMPERIAL COUNCIL OF ORDER OF UNITED FRIENDS, N. J., 29 Atl. Rep. 508.

12. CARRIERS — Passengers — Negligence.—Where a passenger is thrown from the platform of an overcrowded excursion car by the swaying of the train in passing a curve at a rapid rate, the jury are justified in finding defendant guilty of negligence.—LYNN V. SOUTHERN PAC. CO., Cal., 36 Pac. Rep. 1018.

13. CHAMPERTY.—A contract by which one of two heirs who are having a controversy over the appointment of an administrator agrees to pay a third person half of what he can save by buying out the interest of the other is not champertous.—JOY V. METCALF, Mass., 37 N. E. Rep. 671.

14. CHATTEL MORTGAGE — Corporation.—The mortgagee of chattels belonging to a corporation placed them in the hands of the secretary of the corporation to dispose of at private sale for the benefit of the mortgagee: Held, that the secretary was liable to the mortgagee for the proceeds of such sale, though the corporation was then indebted to him for salary.—STAFFORD V. BLUM, Tex., 27 S. W. Rep. 12.

15. CHECKS—Presentment and Payment.—The payee of a check deposited it for collection with Bank A on the same day it was made. The bank presented it for payment the next day, shortly before 11 o'clock, and the drawee's check on Bank B, only a few blocks distant, was taken in payment. The drawee became bankrupt at 1 o'clock. Several checks given after this, one by the drawee on Bank B, were paid before one o'clock. Before 3 o'clock Bank A presented the check in question for payment, which was refused, whereupon it immediately went to the drawee, and, after recovering the original check, protested it: Held, that the drawer of the check was not liable thereon.—ANDERSON V. GILL, Md., 29 Atl. Rep. 527.

16. CONDITIONAL SALE—When Title Passes.—Where oxen are sold under an agreement that the title shall not pass until the price is paid, the fact that, on the books of the plaintiff, defendant is charged with the price, and that there are other debits on the account for goods sold and credits exceeding the amount of the price of the oxen, does not give the purchaser title to the oxen.—PECAN LAKE MILL CO. V. AMERICAN COOPERAGE CO., Miss., 15 South. Rep. 580.

17. CONSTITUTIONAL LAW—Special Act.—Chapter 140, of the laws of 1893 ("An act to establish a county high school in Labette county, Kansas"), does not contravene section 17 of article 2 of the constitution, which provides that laws of a general nature shall have a uniform operation throughout the State, and that no special laws shall be enacted where a general law can be made applicable; nor is it in conflict with section 2 of article 6, which authorizes the legislature to establish a uniform system of common schools and schools of a higher grade.—EICHOLTZ V. MARTIN, Kan., 36 Pac. Rep. 1064.

18. CONSTITUTIONAL LAW — Special Legislation—Licenses.—A city ordinance requiring certain classes of professional men to pay a quarterly license is not class legislation where its terms apply equally to all persons of the classes named.—CITY OF BOZEMAN V. CADWELL, Mont., 36 Pac. Rep. 1042.

19. CONTRACT—Ability to Third Person.—Since one who blasts rocks on his land with due care is not liable to his neighbor for inevitable damage caused thereby, nor for the carelessness of a subcontractor, his neighbor cannot sue his contractor, as indemnitor, on a contract to be answerable to the owner for any damages to the property of a neighbor during the work for damages done to her property by the blasting operations of the independent subcontractor.— FRENCH V. VIX, N. Y., 37 N. E. Rep. 612.

20. CONTRACT—Option to Sell Stock—Construction.—Under Code, § 2769, declaring that every written contract, the foundation of a suit, imports a sufficient consideration which may be impeached by plea, and that, when so impeached, the burden of proof is on defendant, a plea in an action on a contract alleging that it was without consideration is sufficient.—KOLSKY V. ENSLEN, Ala., 15 South. Rep. 558.

21. CONTRACT—Subscription Paper.—A subscription paper was signed by several persons, by which they agreed to contribute certain sums to attain an object sought to be attained by all. The promise of each of the subscribers was a good consideration for the agreement or promise to pay embodied in the subscription of the others, and the promise of each enforceable by the action of the person to whom the subscription ran or was directed, provided he had complied or fulfilled the terms or conditions upon which the subscriptions were made.—ARMANN V. BUEL, Neb., 59 N. W. Rep. 515.

22. CORPORATION—Officers — Ratification.— Plaintiff and W, at request of defendant's president, rendered medical services to an employee of defendant, who had been injured, while in its service, without fault on defendant's part. Defendant paid W, and offered plaintiff $250, which he refused: Held that, though the president had no authority to employ physicians for it, defendant was under a moral obligation to pay for their services, and that by paying W, and offering to pay plaintiff, it ratified the contract.—FRASER V. SAN FRANCISCO BRIDGE CO., Cal., 36 Pac. Rep. 1037.

23. CRIMINAL EVIDENCE— Assault.— In the prosecution of a father for assaulting one with whom his son was fighting, evidence of words passed between the son and the prosecutor before the fight, even if relevant, is not so evidently material as that its exclusion can be deemed prejudicial to defendant.—STURDIVANT V. STATE, Ark., 27 S. W. Rep. 6.

24. CRIMINAL EVIDENCE—Dying Declarations.—In a murder case, statements of deceased, that "I am shot. I shall die. Oh, Lord have mercy, Lord have mercy, I shall die!" are admissible as dying declaration, though deceased did not state to the witness who did the shooting.— STATE V. CRONIN, Conn., 29 Atl. Rep. 536.

25. CRIMINAL LAW—Alien Judge.—Objection to a juror on the ground of alienage is waived by failure to examine him as to that point on his *voir dire*.—BROWN V. PEOPLE, Colo., 36 Pac. Rep. 1040.

26. CRIMINAL LAW—Dying Declarations.—Statement by Accused.—A dying declaration is not inadmissible because made under oath.—STATE V. TALBERT, S. Car., 19 S. E. Rep. 852.

27. CRIMINAL LAW — Evidence of Codefendants. — Where persons jointly indicted elect to be tried separately, the wife of one of them may testify against the other.—SMITH V. COMMONWEALTH, Va., 19 S. E. Rep. 843.

28. CRIMINAL LAW—Insanity.—On a trial for murder, —the defense being insanity, and defendant's evidence on that point being confined to the 10 years prior to the homicide,—it was error to allow the State to show that, 20 years before, she abandoned her husband and children, and went away with deceased, as not only was the evidence immaterial and prejudicial, but evidence as to sanity should be confined to the period covered by defendant.—GREEN V. STATE, Ark., 27 S. W. Rep. 5.

29. CRIMINAL LAW—Homicide — Intoxication.—If an intoxicated person has the capacity to form an intent to take life, and conceives and executes such intent, it is no ground for reducing the degree of his crime to murder in the second degree that he was induced to conceive it, or to conceive it more suddenly, by reason of his intoxication.—WARNER v. STATE, N. J., 29 Atl. Rep. 505.

30. CRIMINAL LAW—Organization of Grand Jury.—So ong as section 584 of the Criminal Code shall remain in force, no grand jury can be lawfully organized unless its selection and impaneling has been previously ordered by a judge of the district court in which such grand jury is to act.—STATE v. LAUER, Neb., 59 N. W. Rep. 508.

31. CRIMINAL PRACTICE—Indictment—Exceptions.—It is not necessary to aver in the indictment that the defendant does not come within an exception in a *proviso* to the enacting clause.—BELL v. STATE, Ala., 15 South. Rep. 557.

32. DAMAGES — Changing Street Grade—Compensation.—Under Const. 1879, art. 1, § 14, providing that private property shall not be taken "or damaged" for public use without just compensation having been first made, damages peculiar to property of an abutting owner may be recovered of one who fills earth into a street to conform to a new grade to which it had been lawfully changed, though he is duly authorized to do so.—DE LONG v. WARREN, Cal., 36 Pac. Rep. 1009.

33. DECEIT—Proof of Scienter.—A false representation of a material fact, made with knowledge of its falsity, to a person ignorant thereof, with intention that it shall be acted upon, followed by reliance upon and by action thereon amounting to substantial change of position, is a fraud of which the law will take cognizance.—WHEELER v. BAARS, Fla., 15 South. Rep. 584.

34. DECEIT—Special Damages.—In an action for deceit, in selling plaintiff glandered horses, special damages are recoverable for medical treatment of the horses, and for the value of the stable, which plaintiff had to burn, to prevent contagion.—MERGUIRE v. O'DONNELL, Cal., 36 Pac. Rep. 1033.

35. DEED—Consideration.—A deed to take effect on the grantor's death, conveying her entire interest in land which she expected to be devised to her by her mother's will, followed by a clause of general warranty, is not a mere quitclaim deed of the interest that the grantor had in the land when it was executed, but will pass to the grantee the title acquired by the grantor on her mother's death through her will.—JENKINS v. ADCOCK, Tex., 27 S. W. Rep. 21.

36. DEED—School Land—Construction.—A deed which "conveys and warrants" a parcel of land to a town "for the use of the common schools" passes the fee, free from condition.—NEWPOINT LODGE NO. 255 F. & M. v. SCHOOL TOWN OF NEWPOINT, Ind., 37 N. E. Rep. 650.

37. DIVORCE—Jurisdiction.—Under Pub. St. ch. 167, § 15, providing that the court shall not have jurisdiction in divorce unless petitioner shall, at the time of preferring such petition, have been a domiciled inhabitant of the State, and have resided therein for a year next before preferring the petition, a respondent in a divorce case cannot file an answer in the nature of a cross-bill where she is not a domiciled inhabitant of the State.—VALK v. VALK, R. I., 29 Atl. Rep. 499.

38. DOMICILE — Evidence — Declarations.— Declarations of deceased, made in the ordinary course of business, as to his intention in going to a place where he resided for several months, and where he died, are competent on the issue whether he intended making such place his domicile.—CHASE v. CHASE, N. H., 29 Atl. Rep. 553.

39. EMINENT DOMAIN—Railroad Companies.—A railroad company may exercise the right of eminent domain to acquire terminal facilities regardless of whether it has by contract lost the right to use steam on part of its line.—IN RE LONG ISLAND R. CO., N. Y., 37 N. E. Rep. 636.

40. EQUITY—Bill by Corporate Stockholder.—A request of the governing body of a corporation by a stockholder for the redress of grievances before he brings suit is not necessary where the corporate management is under the control of the guilty parties, but the complainant must allege with particularity the facts which excuse such request to the directors.—BELL v. MONTGOMERY LIGHT CO., Ala., 15 South. Rep. 569.

41. EVIDENCE— Letters.— Where notice to produce certain letters is not given, and no evidence is offered to show that they are lost or destroyed, copies are not admissible.—HOME PROTECTION OF NORTH ALABAMA v. WHIDDEN, Ala., 15 South. Rep. 567.

42. EVIDENCE — Legitimacy.— On an issue whether petitioner was testatrix's illegitimate daughter, the exclusion of evidence that testatrix had never mentioned having any daughter was not prejudicial where petitioner not only made no claim that testatrix had ever recognized her as her daughter, but produced evidence that she had not.—IN RE KENNEDY'S ESTATE, Cal., 36 Pac. Rep. 1030.

43. EVIDENCE — Res Gestæ.—In an action for work and material in the repair of a house, where defendant claims that it was all done under a contract for a certain amount, and plaintiff claims that only part was covered by such contract, the testimony of plaintiff's agent as to what he figured on when defendant asked him what that part of the work would cost is admissible, as part of the transaction, in support of plaintiff's contention that that part only of the work was then talked of, and included in the contract shortly thereafter made for the certain amount.—RAY v. ISBELL, Conn., 29 Atl. Rep. 538.

44. FEDERAL COURTS — Equitable Remedies under State Laws.—A remedy by injunction against the collection of an illegal tax, expressly provided by a State statute, may be applied by Federal Court of equity in the State, notwithstanding the statute also provides for an action at law to recover back the tax when paid.—MEYERS v. SHIELDS, U. S. C. C. (Ohio), 61 Fed. Rep. 713.

45. FEDERAL COURTS—Jurisdiction of Supreme Court—State Statutes.—On writ of error to review the judgment of the highest court of a State on the ground that the judgment was against a writ claimed under the constitution of the United States, the Supreme Court is not bound by the State court's construction of a statute of the State, when the question is whether the statute provided for the notice required to constitute due process of law.—SCOTT v. MCNEAL, U. S. S. C., 14 S. C. Rep. 1108.

46. FEDERAL COURTS—Writ of Error.—Circuit Court of Appeals.—As power to amend writ of error, under Rev. St. § 1005, is conferred by Act March 3, 1891, § 11, on a Circuit Court of Appeals, that court may affix its seal to such a writ, formal in all respects save absence of a seal; and the operation of such a writ is not defeated by the fact that it is not returned attached to the transcript of the record where it is returned on the day the transcript is filed, indorsed as executed by sending the transcript as commanded, for the defect may be amended.—COTTER v. ALABAMA G. S. R. CO., U. S. C. C. of App., 61 Fed. Rep. 747.

47. FRAUDULENT CONVEYANCE — Consideration.—Where an insolvent debtor conveys his property in consideration of an antecedent debt, the burden of proof is upon the grantee, in an action by the creditors to set aside the conveyance to show *bona fides*.—MURRAY v. HEARD, Ala., 15 South. Rep. 565.

48. FRAUDULENT CONVEYANCES — Deed to Intended Wife.—Prior to 1887 a deed from a man to his intended wife, in consideration of marriage, was good, as against his creditors, if there were no fraudulent intent on the part of the grantee, but was void if the grantee participated in a fraudulent intent on the part of the grantor.—MOORE v. BUTLER, Va., 19 S. E. Rep. 850.

49. FRAUDULENT CONVEYANCES — Husband and Wife.—In a suit between a wife and a creditor of her husband concerning property transferred to her by him after the contracting of indebtedness by him, the burden is upon the wife to establish by a preponderance of the evidence the *bona fides* of the transfer of the property to her.—MELICK V. VARNEY, Neb., 59 N. W. Rep. 621.

50. GUARANTY—Acceptance.—A promise, "If H needs more money, let him have it, or assist him to get it, and I will see that it is paid," is a guaranty only, and, though not requiring an express acceptance, calls for seasonable notice of any action taken thereon.—BISHOP V. EATON, Mass., 37 N. E. Rep. 665.

51. HOMESTEAD—Abandonment—Evidence.—The act of registering as a voter is not conclusive upon the question of the residence of the party registered. In an action to relieve a piece of real estate of the lien created by the levy of an attachment writ on real estate claimed as a homestead, but is a fact to be considered as any other portion of the testimony in the case, and to be given such weight as it seems entitled to under the rules governing the consideration of evidence; and especially is this true in this case, where it is a disputed point in the testimony as to whether defendant appeared in person before the board of registration, and effected the registration, or it was done by some other person.—MALLARD V. FIRST NAT. BANK OF NORTH PLATTE, Neb., 59 N. W. Rep. 511.

52. HOMESTEAD — Lease of Portion of Building.—Where the owner of a building rents the lower front part, and lives in the rear and second story, the whole building is, as his homestead, exempt from execution.—FORD V. FORSGARD, Tex., 27 S. W. Rep. 57.

53. HUSBAND AND WIFE—Wife's Interest in.—A married woman who joins with her husband in a deed of conveyance whereby, under their hands and seals, and for an expressed consideration of one dollar, they grant, bargain, sell, and quitclaim certain real estate to another, which formerly belonged to the husband, but has been sold to satisfy an execution issued on a judgment against him, has no inchoate interest in the land which can ripen into an estate upon the death of her husband.—ORTMAN V. CHUTE, Minn., 59 N. W. Rep. 533.

54. HUSBAND AND WIFE — Separation— Reconciliation.—A New York judgment of separation from bed and board forever is not annulled by the mere reconciliation and cohabitation of the parties, the Code of Civil Procedure of that State providing for a revocation of such judgment by the court on the joint application of the husband and wife.—JONES V. JONES, N. J., 29 Atl. Rep. 502.

55. INDIAN TERRITORY—Arkansas Statute— Death by Wrongful Act.—Under Act May 2, 1890, § 31, which extend over the Indian Territory, certain laws of Arkansas, as published in Mansfield's Digest, "which are not locally inapplicable or in conflict with this act or with any law of congress, relating to the subjects specially mentioned in this section," enumerating chapters of said digest by title and number, among "Pleadings and Practice, chapter 119," section 5225 of that chapter, allowing recovery of damages for death by negligence, cannot be excluded on the ground that it does not relate to pleadings and practice, as the intent was to adopt the provisions of the enumerated chapters as a whole, unless they were locally inapplicable, or in conflict with the act or some other existing act of congress.—ARDMORE COAL CO. V. BEVIL, U. S. C. C. of App., 61 Fed. Rep. 757.

56. INSURANCE—Conditions.—The condition as to the assured's sole ownership, and the absence of incumbrances, does not take effect as to a transfer of which the insurer is fully informed before the contract is made.—FORWARD V. CONTINENTAL INS. CO., N. Y., 37 N. E. Rep. 615.

57. INSURANCE — Conditions — Arbitration.—The insured is not precluded from suing on a policy, by a provision therein that the amount to be paid, in case of disagreement, shall be submitted to arbitration, but not expressly or by implication prohibiting suit until after such arbitration.—MUTUAL FIRE INS. CO. OF NEW YORK V. ALVORD, U. S. C. C. of App., 61 Fed. Rep. 752.

58. INSURANCE — Description of Property.—A house that had been used for years as an hotel, and was sold to plaintiff at auction as such, does not become a dwelling house by the occupancy of a care taker pending plaintiff's inability to sell it, and is not insurable as a dwelling house.—THOMAS V. COMMERCIAL UNION ASSUR. CO., Mass., 37 N. E. Rep. 672.

59. INSURANCE — Misrepresentations by Company.—Held that, under the facts of this case, the jury would have been justified in finding that, by reason of certain misrepresentations and unauthorized acts of the defendant insurance company (especially in demanding of the insured payment of an assessment in addition to his premiums), the insured was misled and induced to refrain from paying the premiums which he otherwise would have paid.—COLBY V. LIFE INDEMNITY & INV. CO, Minn., 59 N. W. Rep. 539.

60. INTOXICATING LIQUORS—Res Gestæ.—On prosecution for the illegal sale of liquor, where the sales were made from a buggy on the highway, testimony that, at the time of purchasing liquor, witness had heard the man in the buggy called by defendant's name, is admissible as part of the *res gestæ*—PEOPLE V. STANLEY, Mich., 59 N. W. Rep. 498.

61. INTOXICATING LIQUORS—Illegal Sale—Ordinance.—A prosecution for selling liquor without a license, contrary to a city ordinance, does not conflict with a prosecution under the State law for the same selling, since a single act may constitute two distinct offenses.—STATE V. STEVENS, N. Car., 19 S. E. Rep. 861.

62. INTOXICATING LIQUORS—Sale—Women.—Under Cr. Laws, § 261 (Comp. St. p. 578), making it unlawful to sell liquor in any place where women are employed or allowed to assemble for the purpose of the business therein carried on, an indictment charging the sale of liquor in a place where women are both employed and allowed to assemble is not bad for duplicity.—STATE V. MARION, Mont., 36 Pac. Rep. 1044.

63. JUDGE—Disqualification.—The principle of disqualification of a judge by reason of a previous relation of attorney and client should not be given a narrow and technical construction, but should be applied to all classes of cases and to all judicial officers.—STATE V. HOCKER, Fla., 15 South. Rep. 581.

64. JUDGMENT — Action on Foreign Judgment—Defenses.—In an action on a judgment of another State, where plaintiff alleges that the judgment was rendered upon summons and complaint duly and personally served upon defendant, an answer denying that any valid judgment was rendered, or that defendant appeared, or authorized an appearance, is sufficient as a plea of want of jurisdiction in the foreign court.—AULTMAN, MILLER & CO. V. MILLS, Wash., 36 Pac. Rep. 1046.

65. JUDGMENT — Amendment. — Under Code, § 2838, providing that, when damages in tort do not exceed $20, plaintiff shall recover no more costs than damages, unless the judge certify that greater damages should have been awarded, a judgment in an action for injury to land, for $6 and full costs, is erroneous where the judge failed to certify that greater damages should have been awarded, but such error cannot be corrected by motion at a subsequent term to amend the judgment so that the costs should be limited to the damages.—TIPPINS V. PETERS, Ala., 15 South. Rep. 564.

66. JUDGMENT—Collateral Attack.—Rev. St. art. 1778, relating to escheat, which require a citation to issue for all persons interested in the estate to appear and answer the petition, is not complied with by issuing a citation for "the unknown heirs" of the owner, since there could have been no escheat if he left either heirs or devisees; and hence, the court having acquired no jurisdiction, its judgment declaring the escheat is sub-

ject to collateral attack, and evidence is admissible to show that the owner was alive when the judgment was rendered.—CAPLEN v. COMPTON, Tex., 27 S. W. Rep. 24.

67. JUSTICE OF THE PEACE — Disqualification—Personal Interest.—A justice of the peace is not disqualified by reason of interest, to try a person on the complaint of a grand juror for criminal libel, though the justice was the person libeled.—CLYMA v. KENNEDY, Conn., 29 Atl. Rep. 539.

68. LIBEL—Evidence of Good Character.—In an action for libel, where the complaint alleges plaintiff's good character, and defendant avers that he has no knowledge or information sufficient to form a belief as to such allegation, the admission of evidence as to plaintiff's good character is not error, in the absence of a disclaimer by defendant of any intention to attack her character.—STAFFORD v. MORNING JOURNAL ASS'N, N. Y., 37 N. E. Rep. 625.

69. LIBEL— Privileged Communications. — Where a libelous letter stated that the addressee might read it to all he wished, the writer cannot claim that the letter was a privileged communication.— COLES v. THOMPSON, Tex., 27 S. W. Rep. 46.

70. LIMITATIONS — Eviction of Tenant. — Where a landlord wrongfully evicts a tenant holding under a lease, completely ending the tenant's enjoyment of the leased premises, limitations run against an action for the breach from the date of the eviction.—TRUBE v. MONTGOMERY, Tex., 27 S. W. Rep. 18.

71. LIMITATION OF ACTIONS—Creditor's Bill.—A creditor's action to set aside a conveyance in fraud of creditors is within the six year limitation of Code Civ. Proc. § 382, as an equitable action to procure a judgment other than for money, on the ground of fraud, wherein the cause of action is not to be deemed accrued until the creditor's discovery of the fraud; but, whether the fraud be known or not, the right of action does not accrue till recovery of judgment against the debtor within the State and return of execution unsatisfied.—WEAVER v. HAVILAND, N. Y., 37 N. E. Rep. 641.

72. LIMITATION OF ACTIONS — Extinguishment of Debt—Foreign Statute. — Where, before a statute of limitations of a foreign country has become operative, by way of extinguishment of the debt, as between two citizens or residents of that country, one of them has permanently changed his national domicile and become a citizen of one of the United States, the statute will not become an absolute bar, as an extinguishment, in the courts of such State.—CANADIAN PAC. RY. CO. v. JOHNSON, U. S. C. C. of App., 61 Fed. Rep. 738.

73. MARINE INSURANCE— Duration of Risk.—An open policy on future shipments of cotton, to be certified thereunder by the assured, insured the goods "until safely landed at——," and had written on the margin: "This policy covers also all risks at and from the port of destination to the final destination." The cotton was shipped, as certified and billed, to Liverpool, and was safely landed on the dock, where it was burned: Held, that the written clause did not continue the risk until the cotton arrived at the warehouse or was delivered into the manual custody of the consignees, a Liverpool firm.—BEDDALL v. BRITISH & FOREIGN MARINE CO., N. Y., 37 N. E. Rep. 613.

74. MASTER AND SERVANT— Injuries— Assumption of Risk.—When a servant who has knowledge of defects in the instrumentalities furnished for his use, or in machinery about which he is employed, is induced to remain in the service by reason of a promise made by the master that the defects shall be repaired or remedied,— the instrumentality or machinery not being so imminently and immediately dangerous that a man of ordinary prudence would have refused to longer use or work about it,—the servant may recover for an injury caused thereby within such a period of time after the promise as would be reasonably allowed for its performance, or within any period which would not preclude all reasonable expectation that the promise might not be kept.—ROTHENBERGER v. NORTHWESTERN CONSOLIDATED MILLING CO., Minn., 59 N. W. Rep. 531.

75. MASTER AND SERVANT— Injuries—Dangerous Excavation.—A railroad company was excavating soil of a treacherous, rotton, and seamy character, requiring very great caution. Chambers were dug in on either side of the soil and then the blocked-out mass was broken off. The chamber had been sunk to the depth of 13 feet, instead of 6 or 8 feet, as usual. The sides were not supported, and plaintiff, who did not know of the danger was ordered to go in and dig the chamber deeper, his superior making no examination to ascertain whether it was safe to do this work. The sides caved in, and permanently injured plaintiff: Held, that the company was liable.—NORFOLK & W. R. CO. v. WARD, Va., 19 S. E. Rep. 849.

76. MASTER AND SERVANT—Rules.—A railroad company, having creosote works for the treatment of ties, had the ties brought in on one track, and piled between it and another, by which they were taken to the works: Held, that the business was not of such a nature as to require the company to prescribe rules for those taking away the ties to leave the remnant of a pile in such condition that it would not fall on employees unloading other ties.—TEXAS & N. O. RY. CO. v. ECHOLS, Tex., 27 S. W. Rep. 60.

77. MEASURE OF DAMAGES— Breach of Contract. — Where a buyer rescinds before delivery, and refuses to accept the goods when tendered, the seller is entitled to recover the difference between the contract price and the value of the goods at the time and place of delivery.—ADLER v. KIBER, Tex., 27 S. W. Rep. 23.

78. MECHANIC'S LIENS.—In the notice of lien, a statement of the terms of payment as "cash on completion of contract" is sufficient.—KELLY v. PLOVER, Cal., 36 Rep. 1020

79. MORTGAGE—Description—Parol Evidence.—Where the description in a mortgage describes two tracts of land with equal certainty, and purports to convey only one, parol evidence is not admissible, where the instrument comes collaterally in question, to show that it was the intention of the parties to convey both tracts, as such evidence does not explain the mortgage, but enlarges it.—CLARK v. GREGORY, Tex., 27 S. W. Rep. 56.

80. MUNICIPAL CORPORATION— Invalid Contract — Ratification.—The contract of a municipal corporation, which is invalid when made, as in violation of some mandatory requirement of its charter, can be ratified only by an observance of the conditions essential to a valid agreement in the first instance.—GUTTA-PERCHA & RUBBER MANUF'G CO. v. VILLAGE OF OGALALLA, Neb., 59 N. W. Rep. 513.

81. MUNICIPAL CORPORATION—Street Assessments.—A street assessment is not objectionable, as being unequal, because the charge for laying and curbing sidewalks was against only two lots while the charge for regrading and macadamizing, etc., was on the whole district; the resolution of intention showing that the work as to curbing and sidewalks was to be confined to the portions of the district in which curbing and sidewalks had not been laid.—MCSHERRY v. GULLIVER, Cal., 36 Pac. Rep. 1010.

82. MUNICIPAL CORPORATION — Street Assessment—Extension of Time.—Under Act March 18, 1885, § 6, providing that the street superintendent shall fix a time for completion of work under any contract made with him, which may be extended from time to time, an extension may be granted before a previous extension has taken effect, to begin at the expiration of such previous extension.—BUCKMAN v. CUNEO, Cal., 36 Pac. Rep. 1025.

83. MUNICIPAL CORPORATION—Street Assessments — Waiver.—St. 1889, p. 157, providing for levying and collecting assessments for work upon streets, and, by section 8, that the warrant, assessment, certificate, diagram, and affidavit of demand and non-payment shall

be held *prima facie* evidence of the regularity of the assessment, embraces but one subject, within Const. art. 4, § 24.—DOWLING v. CONNIFF, Cal., 36 Pac. Rep. 1034.

84. NEGLIGENCE—Dangerous Appliances — Injury to Children.—Where the evidence showed, without question, that torpedoes necessary to the operation of its railroad were deposited and kept in defendant's untenanted section house—all the doors and windows of which were securely fastened shut, and that access to and removal of these torpedoes were effected by children, who unfastened and opened one of the windows for those, among other, improper purposes, held, that the defendant is not liable for an injury caused by the subsequent explosion of one of said torpedoes, procured and removed as aforesaid.—SLAYTON v. FREMONT, E. & M. V. R. CO., Neb., 59 N. W. Rep. 510.

85. NEGLIGENCE — Telephone Wire over Railroad Track.—Where a brakeman in the employ of a receiver of a railroad company is injured, without fault on his part, by being thrown from a freight car by a telephone wire which the telephone company negligently allows to hang too low over the railroad track, and the receiver and telephone company knows, or by ordinary care and diligence might know, the condition of such wire, both the receiver and telephone company are liable to such brakeman for the damages sustained.—SOUTHWESTERN TELEGRAPH & TELEPHONE CO. v. CRANK, Tex., 27 S. W. Rep. 38.

86. NEGOTIABLE INSTRUMENT—Indorsement of Note.—The payee of a negotiable promissory note transferred it, with the following indorsements: "Pay to A B [Signed] C D." "Payment guarantied. [Signed] C D:" Held, that this was an "indorsement," in the commercial sense, and that the transferee was an "indorsee," under the law merchant.—ELGIN CITY BANKING CO. v. ZELCH, Minn., 59 N. W. Rep. 544.

87. PARTNERSHIP—Firm Property.—The fact that land purchased with firm funds stands in the name of one of the partners does not estop the firm from claiming such property, on becoming bankrupt, as against a person who may have dealt with such partner on the faith of the property, as a creditor of a partner cannot acquire any greater interest in the partnership property than the partner himself has.—GOLDTHWAITE v. JANNEY, Ala., 15 South. Rep. 560.

88. PARTNERSHIP—Power of Partners—Authority.—It is the general principle relating to commercial or trading partnerships that each partner is the lawful agent of the partnership in all matters within the apparent scope of the business.—BARBER v. VAN HORN, Kan., 36 Pac. Rep. 1070.

89. PARTY WALLS—Agreement—Evidence.—In an action on an agreement between adjoining owners for half the cost of a party wall which was built by plaintiff as part of a building, the architect's testimony to its cost as such part is sufficient basis for a verdict on the agreement. — PREFONTAINE v. MCMICKEN, Wash., 36 Pac. Rep. 1048.

90. PHYSICIANS—Practicing without License.—A person who has practiced medicine in the State for five years, though he is not a graduate of a medical school, is a "physician," within Acts 1890-91, providing that "any person practicing medicine" without a certificate of qualification from an authorized board of examiners shall be punishable, but that the act shall not apply to any "physician" who has practiced medicine in the State for the past five years.—HARRISON v. STATE, Ala., 15 South. Rep. 563.

91. PLEADING—Husband and Wife—Set-off.—Where a husband sues as the agent of his wife, defendant may set up as a defense any claim which he might have set up against the wife had she sued.—BLISS v. SNEATH, Cal., 36 Pac. Rep. 1029.

92. RAILROAD COMPANIES—Accidents at Crossings.—In the absence of an ordinance limiting the speed of railroad trains through a village, a railroad company may run its trains through such village at any rate of speed consistent with the safety of its trains and passengers and of persons rightfully upon its right of way at road crossings, who are exercising ordinary care.—PARTLOW v. ILLINOIS CENT. R. CO., Ill., 37 N. E. Rep. 663.

93. RAILROAD COMPANY — Intoxicated Person—Negligence.—Though, by keeping a proper lookout on an engine, an intoxicated person lying on the track could have been seen on the track in time to avoid killing him, recovery cannot be had, it having been impossible to prevent the accident after his discovery, as his negligence is concurrent with or subsequent to that of the engineer, and the proximate cause of the injury.—SMITH v. NORFOLK & S. R. CO., N. Car., 19 S. E. Rep. 863.

94. RAILROAD COMPANIES—Stoppage of Train—Mandamus.—Under Mansf. Dig. §§ 5501, 5502, which provide that before a town can compel the stoppage of trains within its corporate limits, as provided by section 5500, the authorities shall tender the company the reasonable expenses of grading a switch or sidetrack at such place, and that *mandamus* may issue at the suit of any citizen of the town to compel the company to stop its trains as provided by section 5500, such tender must be made before *mandamus* will lie, though the company has already constructed all the switches and sidetracks necessary for the stopping of trains.—ST. LOUIS, I. M. & S. RY. CO. v. B'SHEARS, Ark., 27 S. W. Rep. 2.

95. RECEIPT — Construction.—A receipt in full for "fees" is not a complete defense to an action for attorney's fees, rent, and use of law library, in the absence of an agreement that the amount for which it was given was in full discharge of the debt.—KEPLER v. JESSUP, Ind., 37 N. E. Rep. 655.

96. RECEIVERS— Controversy Regarding Possession of Property.—Property leased by one railroad company to another, and in possession of a receiver of an assignee of the lessee, was claimed by the receiver of the lessor on the ground that the lease had been terminated by notice by the lessor: Held, that the court which appointed both receivers had jurisdiction of a proceeding for determination of the controversy, either by an independent bill or by petition.—COMER v. FELTON, U. S. C. C. of App., 61 Fed. Rep. 731.

97. RECEIVER'S CERTIFICATES— Mortgages.—The receiver of a corporation applied for an order to sell the corporate property to pay receiver's certificates among other debts and a bank holding a mortgage on the land filed a cross-bill to foreclose. The certificates were adjudged a first lien, and the mortgage was foreclosed, and, at the sale, the mortgagee bid in the property for less than the amount of the mortgage. Its bid was credited on its judgment in foreclosure, and it paid its *pro rata* share of the first liens: Held, that the mortgage became subrogated to the rights of the holders of the certificates, and was entitled to have the amount thereof paid out of funds subsequently coming from other sources into the receiver's hands.—TARVER v. LAND MORTGAGE BANK OF TEXAS, Tex., 27 S. W. Rep. 40.

98. REPLEVIN—Assignment of Mortgage Notes.—One to whom a promissory note is indorsed and delivered as collateral security thereby becomes the legal owner and holder of said note, and may maintain a suit thereon in his own name; and, if such note is secured by a chattel mortgage, the indorsement and delivery of the note will carry the mortgage with it.—KAVANAUGH v. BRODBOLL, Neb., 59 N. W. Rep. 517.

99. SALE—Payment by Check— Bona Fide Purchaser.—Where a thing is sold for cash, but a check is accepted for the purchase money, and the property is delivered on the implied condition that the check will be paid on presentation, but the vendor gives to the vendee an absolute bill of sale or assignment of the property, he will be estopped from asserting that the delivery was conditional, as against a subvendee in good faith, for value, who purchased in reliance on the vendee's muniments of title.—COCKRAN v. STEWART, Minn., 59 N. W. Rep. 543.

100. SALE—Validity.—A parol sale of horses running loose on a range, in payment of an antecedent debt, does not pass title.—HICKMAN v. HICKMAN, Tex., 27 S. W. Rep. 31.

101. SAVINGS BANKS — Preference—National Bank.—Laws 1892, ch. 689, § 130, providing that the claim by a savings bank as a depositor in a national bank becomes insolvent, is not in conflict with Rev. St. U. S. §§ 5236, 5242, which provide that claims against an insolvent national bank shall be paid *pro rata*, and that any transfer of its property made with intent to prefer creditors shall be void. 26 N. Y. Supp. 200, affirmed.—ELMIRA SAV. BANK v. DAVIS, N. Y., 37 N. E. Rep. 646.

102. TAXATION—Seat in Stock Exchange.—A seat in a stock exchange, which is a personal privilege of being and remaining a member of a voluntary association, with the assent of the associates, is not taxable property.—CITY AND COUNTY OF SAN FRANCISCO v. ANDERSON, Cal., 36 Pac. Rep. 1034.

103. TELEGRAPH COMPANIES—Damages.—In an action against a telegraph company for delay in delivering a message announcing the sickness of plaintiff's father, and his impending death, it appeared that plaintiff would not have had time to be present at the funeral if the message had been duly delivered: Held, that plaintiff could not recover for injury to her feelings on the ground that, if she had received the message promptly, at her request the funeral would have been postponed to enable her to attend it. — WESTERN UNION TEL. CO. v. MOTLEY, Tex., 27 S. W. Rep. 52.

104. TELEGRAPH COMPANY— Delay. — Where a telegram is addressed to a husband, announcing the impending death of his wife's father, and the operator is informed of the relationship of the parties and the importance of the message, the wife may recover damages of the telegraph company for delay as if the message had been addressed to her.—WESTERN UNION TEL. CO. v. MOTLEY, Tex., 27 S. W. Rep. 51.

105. TELEGRAPH COMPANIES—Mental Anguish.—A petition alleging that plaintiff received a message to come to his grandfather, who was ill, to which he answered that he could not come; that another message, announcing the death of his grandfather, was delayed so long that he did not get it in time to attend the funeral; and that the messages were "delivered" and "sent" but averring no contract to send them,—will not support a judgment by default for mental suffering resulting from his deprivation, through defendant telegraph company's negligence, of the privilege of being present at his grandfather's last sickness and funeral.—WESTERN UNION TEL. CO. v. HENRY, Tex., 27 S. W. Rep. 63.

106. TRESPASS TO TRY TITLE—Evidence.—Where in trespass to try title it is agreed that both parties claim from a common grantor, and plaintiff shows a title in himself under an execution sale against such grantor, he shows a *prima facie* right of recovery, and he is not also required to show the nature of defendant's title, and the falsity of it.— SIMMONS HARDWARE CO. v. DAVIS, Tex., 27 S. W. Rep. 62.

107. TRUST — Deed by Trustee.— Certain land was patented to "Jacob de Cordova, trustee of the German Emigration Company and J. J. Giddings, assignee of Frederick Stoppelberg:" Held that, assuming that Cordova appears, on the face of the patent, to have been trustee for both the German Emigration Company and J. J. Giddings, he could not, *prima facie*, convey the interest of Giddings, in the absence of any evidence of authority from him.—BROWN v. HARRIS, Tex., 27 S. W. Rep. 45.

108. TRUST—Following Trust Funds.— A trust fund wrongfully mingled by a trustee with his other funds and property, and retained by him, may be followed and reclaimed from the administrator of his estate, and paragraph 2864 of the General Statutes of 1889, providing for the classification of demands against the estates of deceased persons, has no application, because such trust funds constitute in equity no part of his estate. — HUBBARD v. ALAMO IRRIGATING & MANUF'G CO., Kan., 36 Pac. Rep. 1053.

109. VENDOR AND PURCHASER — Contract — Title.—A contract stated the terms of sale of land to A as follows: "21 days are allowed to examine title and consummate sale. Title to be examined and accepted by A's attorney.—Abstract to be run down to date. If the sale is not consummated in accordance with the foregoing conditions, the deposit to be forfeited:" Held that, unless A's attorney accepted the title, A was not bound to consummate the sale, and could recover back money deposited on the sale.—ALLEN v. POCKWITZ, Cal., 36 Pac. Rep. 1039.

110. VENDOR AND VENDEE—Bona Fide Purchaser.—A purchaser of a land certificate who takes it for an antecedent debt is not a *bona fide* purchaser. The fact that a purchaser of a land certificate had no "actual knowledge" of a prior equitable title does not make him a *bona fide* purchaser, as he may have had notice of facts sufficient to put him upon inquiry.—JACKSON v. WALDSTEIN, Tex., 27 S. W. Rep. 26.

111. VENDOR AND VENDEE — Executory Contract.—Where the owner of land makes an executory contract to convey when one half the price is paid, in monthly installments, and the vendee makes default, the owner may declare a forfeiture and sue to recover the land. —PELL v. CHANDOS, Tex., 27 S. W. Rep. 48.

112. VENDOR AND VENDEE — Rescission—Fraudulent Representations.—Though defendant believed that his representations as to land, by which he induced plaintiff to make a purchase, were true, and though he told plaintiff that he had never seen the land, and part of the representations consisted of the report of an employee, still, they have been materially false, plaintiff is entitled to a rescission.—GROPPENGIESSER v. LAKE, Cal., 36 Pac. Rep. 1036.

113. VENDOR'S LIEN—Assignment of Purchase-Money Note.—A vendor's lien must, as against a sebsequent mortgage, be shown on the land records like a mortgage, so where a deed showed a vendor's lien, and thereafter a release from the vendor was recorded, a subsequent innocent mortgagee would hold against the vendor's lien, though the purchase-money note was assigned before maturity, there being no record of the assignment of the lien.—MORAN v. WHEELER, Tex., 27 S. W. Rep. 54.

114. WILLS—Construction—Ambiguous Provisions.—Testator, after making several bequests, directed that, "should my present investments increase or decrease in amount or value, then each devisee or legatee or party hereto to share in equal proportion as given above, or *pro rata*." The will left about one-third of his estate undisposed of, and it was impossible to determine certainly whether his investments increased or decreased after the will was made, and before his death: Held, that the quoted clause of the will was void for uncertainty.—NELSON v. POMEROY, Conn., 29 Atl. Rep. 534.

115. WILLS—Residue— Power of Disposition.—Testator, not a lawyer, writing his own will, and, as a childless man, caring chiefly for his wife,—though not apparently contemplating a sale of any property, as needful for her support,—gave her all his estate for life, and to take effect thereafter, and made certain gifts for kin and charity, concluding: "The remainder of my estate I leave to my wife, to dispose of as she may deem expedient; but, in the event that she should make no disposition of the same during her life-time, I give the remainder of my estate, not disposed of as above, to my heirs at law:" Held, that the widow could dispose of the residue by will, and not merely by deed taking effect during her life.—BURBANK v. SWEENEY, Mass., 37 N. E. Rep. 669.

116. WITNESS— Impeachment.—A party cannot impeach a witness by showing written or oral statements made by him, contradicting his evidence, without first calling his attention to such statements on cross-examination, and asking him whether or not he made them.—THOMPSON v. WIRTZ, Neb., 59 N. W. Rep. 518.